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THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS: GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME

Joint written statement* submitted by Centre Europe-Tiers Monde, a non-governmental organization in general consultative status, and the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 July 2000]

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* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

I. On 2 June 2000, Ms. del Ponte told the Security Council that she had decided not to open an investigation into the complaints against the North Atlantic Treaty Organization (NATO). The grounds for that decision can be found in the "Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia". Ms. del Ponte supported the contents and conclusions of the report.

The Committee reaches the same conclusion on all the issues raised: there are no grounds for initiating an investigation. Chapter IV (Assessment) of the report is analysed below.

II. Damage to the environment. The Committee (para. 16) cites the report by the Balkan Task Force established by the United Nations Environment Programme (UNEP), according to which the conflict did not cause an ecological catastrophe affecting the Balkans as a whole but environmental contamination caused by the conflict had been identified in some sites.

The damage was widespread (it occurred in various regions), long-term (if immediate action is not taken, according to the Task Force, there will be damage to health and the environment) and severe.

The subjective (a deliberate attack) and objective (environmental damage causing, or that may be expected to cause, widespread, long-term and severe damage to the natural environment) elements of the crime are therefore present (arts. 35 (3) and 55 (1) of Protocol I to the Geneva Conventions).

III. Use of depleted-uranium projectiles. The Committee states that there is no specific treaty ban on the use of depleted uranium (para. 26).

Although there is disagreement over the effects of depleted uranium, there are official studies (which the Committee does not mention) on the serious consequences arising from its use, including those suffered by United States soldiers in the Gulf war. Articles 35 (3) and 55 (1) of Protocol I - on methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment - are thus perfectly applicable to this case. Naturally, the Committee omitted to mention the disturbing report on the subject by Mr. Bakary Kante, senior adviser to the Director-General of UNEP, which was never issued officially, but which is known to all.

IV. Use of cluster bombs. The Committee's report acknowledges (para. 27) that there is a strong trend to equate the bomblets from inside cluster bombs which do not explode when they hit the ground with anti-personnel landmines (which are prohibited by the 1997 Ottawa Convention). Although the Committee does not say so, it is clear that article 36 of Protocol I can be applied to cluster bombs, by linking it to the Ottawa Convention.

The Committee rejects the application of case law from the International Criminal Tribunal for the Former Yugoslavia (the Martic case, 8 March 1996, para. 18) on the use of cluster bombs, as in its judgement NATO did not use the cluster bombs in the same fashion as in the Martic case. It can only be deduced from this that there is a "bad" and a "good" way to use these bombs, even though NATO used them in all circumstances, including in attacks on civilians.

V. Legal issues related to target selection. On this point, the Committee tries to establish which targets may be considered as military ones and which not, citing article 52 (para. 2 only) of Protocol I and various opinions (paras. 35 ff.).

At the end of paragraph 45, the Committee points out that at the summit in Washington on 23 April 1999, NATO leaders decided to "intensify the air campaign by expanding the target set to include military-industrial infrastructure, media, and other strategic targets".

In paragraph 46, the Committee quotes a NATO report which states that the objective of the bombing was to weaken Serb military capabilities, both strategically and tactically. "Strikes on tactical targets ... had a more immediate effect in disrupting the ethnic cleansing of Kosovo. Strikes against strategic targets ... had [a] long-term and broader impact on the Serb military machine".

No honest military person would say that the "tactical" targets could be hit from an altitude of 5,000 metres or using guided missiles without a wide margin of error.

The Committee says that some of the targets listed are clearly military targets but that the precise scope of the "military-industrial infrastructure, media, and other strategic targets" and "government ministries and refineries" is unclear.

According to the Committee's logic, the NATO bombings hit some targets that were clearly military targets, others that were doubtful or unclear, and others that were civilian targets hit by "mistake".

With regard to the doubtful or unclear targets, the Committee refrained from quoting article 52 (3) of Protocol I: "In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."

On the question of NATO military strategy, the Committee asserts that the judgement of the International Criminal Tribunal for the Former Yugoslavia in the Kupreskic case (14 January 2000, para. 526) is not applicable (para. 52).

The Tribunal said in the Kupreskic case that where there was a series of attacks of questionable lawfulness, there was a cumulative effect that amounted to an unlawful action.

The Committee maintains that a series of lawful attacks does not amount to an unlawful action.

At a conference held at the University of Geneva on 15 June 2000 and attended by several judges from the International Criminal Tribunal for the Former Yugoslavia, the Prosecutor, Ms. Carla del Ponte, Professor Antonio Cassese, until recently a judge at the Tribunal, and other jurists, Professor Cassese, as well as expressing his complete disagreement with the legal arguments contained in the Committee's report, said that the report, in its interpretation of the Kupreskic judgement, treated the three judges who handed it down as incompetents and implied that they might as well go home (this is an almost literal quotation).

VI. General assessment of the bombing campaign. In paragraph 54, the Committee compares the number of attacks and bombs dropped with the number of civilian casualties (estimated at 500), and concludes that those figures do not indicate that NATO conducted its campaign in such a way as to cause substantial civilian casualties, either directly or indirectly.

The Committee concludes in paragraph 55 that the NATO attacks were aimed at striking targets it perceived as legitimate military targets. The Committee believes (para. 56) that the height from which the attacks were carried out was not in itself unlawful, but that NATO had a duty to take practicable measures to distinguish military objectives from civilian ones.

While acknowledging that from an altitude of 15,000 feet (almost 5,000 metres) the target could not be verified with the naked eye, the Committee concludes that the use of modern technology made verification effective in the vast majority of cases.

This statement is contradicted by the data contained in the Committee's own analysis of specific cases, from which it emerges that NATO, on various occasions and for no valid reason, did not use the available technology to verify the military nature of the targets.

VII. Specific incidents. The Committee begins by stating (para. 57) that it had not come across any incident that would justify opening an investigation, and analyses five incidents which, in its view, are the most problematic.

1. Attack on a passenger train on a bridge (Grdelica). The Committee acknowledges that the videos of the attack (presented by General Wesley Clark at a press conference to justify the "mistake") were said to have been tampered with (the pictures had been speeded up 2.7 times) in order to hide the responsibility of the attacker. However, the Committee fails to mention that the tampering was acknowledged as a "normal speeding-up" at a press conference attended by Admiral Quigley in the Office of the Deputy Secretary of Defence in Washington on 6 January 2000.

Moreover, even though the Committee tries to justify the "mistake" (following the arguments of NATO), it does not attempt to justify dropping the second bomb when the attacker had already seen the train, and simply says the attack is not worth investigating (para. 62), ignoring article 57 of Protocol I ("Precautions in attack"), particularly paragraph 2 (b), beginning "An attack shall be cancelled or suspended ...".

2. Attack on a convoy of Albanian refugees. Five attacks were carried out one after the other in broad daylight during a period of an hour-and-a-half (para. 65). The Committee acknowledges that it received a report claiming that Yugoslav television had a recording of the conversation between the pilots showing that they knew the convoy was made up of civilians (para. 66). Although it quotes the NATO report saying the pilots viewed the target with the naked eye (para. 64), the Committee does not ask why they did not use electronic verification equipment or how they could, in broad daylight, make a mistake about the nature of the convoy despite attacking it on five separate occasions. Some of the survivors told foreign reporters that cluster bombs had been used in the attack.

3. Attack on the central studio of the radio and television station in Belgrade. Reference has already been made to paragraph 45 of the Committee's report, where it is stated that NATO leaders, at a summit in Washington on 23 April 1999, decided to attack media installations.

In paragraph 74, the Committee quotes a statement issued by NATO on 8 April 1999 saying that the television studios would be attacked if they did not broadcast uncensored Western news reports for six hours a day. There can be no doubt then that NATO attacked the television studio in its role as a means of mass communication, causing the deaths of journalists and technicians, in violation of article 79 of Protocol I, which the Committee fails to mention.

However, the Committee attempts to show - following the line of reasoning adopted by NATO after the attack - that the television studio was an important part of the military communications network and that destroying it would be a major blow to that system.

The Committee concludes its consideration of this question by maintaining that the television studio was a legitimate target and that the number of civilian casualties was high but not clearly disproportionate (para. 77).

4. Attack on the Chinese Embassy. The Committee goes along with all the explanations given by NATO for its alleged "mistake" and does not question in the slightest the implausible explanations offered by NATO.

5. Attack on the village of Korisa. The foreign correspondents who were in Korisa immediately after the massacre of civilians saw no military equipment at all and one of them told French television that it was impossible to mistake that place for a military target. The explanations given by NATO were enough to convince the Committee that it was a legitimate military target (para. 89).

The Committee pretends not to realize that the attack on Korisa violated the provision in article 52 (3) of Protocol I, whereby, in case of doubt, an object which is normally dedicated to civilian purposes shall be presumed not to be used for military purposes.

In the view of the Committee, these are the five most controversial attacks. The Committee did not think it would be useful to examine the attacks on hospitals, although it does mention some of them at the beginning of the report.

Furthermore, the Committee ignores one of the most sickening episodes of the air war: the attack on the bridge in Varvarin one Sunday lunchtime. The first attack on the bridge killed and wounded several civilians and the second attack hit those giving first aid to the victims of the first attack. This was a "legitimate" target according to NATO.

IX. The Committee concludes the report by finding NATO's statements to be reliable and its explanations honest, and recommends that no investigation whatsoever should be initiated.

X. In the aforementioned conference held on 15 June at the University of Geneva, Ms. del Ponte announced that she had been requested to investigate some crimes attributed to the Kosovo Liberation Army (KLA), and said, without further explanation, that she would not do it

because with the ending of the war the Tribunal no longer had any jurisdiction in Kosovo. The Prosecutor pretends not to know that there is currently an internal armed conflict taking place in Kosovo and that the Tribunal is competent in accordance with its Statute, article 3 of the four Geneva Conventions and the Tribunal's own jurisprudence, which has defined internal armed conflicts.

XI. It can be concluded that, in order to justify the prevailing military doctrine, which is official policy in the United States and by extension within NATO (all-out war on the enemy, consisting of terrorizing the civilian population with daily and nightly bombings and completely destroying the civilian infrastructure, particularly key services such as water, electricity, hospitals, etc., without taking any risks (zero casualties), thereby systematically violating international humanitarian law), Ms. del Ponte's report ignores or distorts the facts and the applicable rules and legal writings, conceals evidence, contradicts itself by disregarding the elementary rules of logic and even questions the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia itself.